

Public Law 100-368
100th Congress

An Act

To amend the provisions of the Toxic Substances Control Act relating to asbestos in the Nation's schools by providing adequate time for local educational agencies to submit asbestos management plans to State Governors and to begin implementation of those plans.

July 18, 1988
[H.R. 3893]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DEFERRAL OF DEADLINE FOR SUBMISSION OF ASBESTOS MANAGEMENT PLANS.

(a) **REQUEST FOR DEFERRAL OF SUBMISSION OF MANAGEMENT PLAN.**—Section 205 of the Toxic Substances Control Act (15 U.S.C. 2645) is amended by adding at the end the following new subsection:

“(d) **DEFERRAL OF SUBMISSION.**—

“(1) **REQUEST FOR DEFERRAL.**—A local educational agency may request a deferral, to May 9, 1989, of the deadline under subsection (a). Upon approval of such a request, the deadline under subsection (a) is deferred until May 9, 1989, for the local educational agency which submitted the request. Such a request may cover one or more schools under the authority of the agency and shall include a list of all the schools covered by the request. A local educational agency shall file any such request with the State Governor by October 12, 1988, and shall include with the request either of the following statements:

“(A) A statement—

“(i) that the State in which the agency is located has requested from the Administrator, before June 1, 1988, a waiver under section 203(m); and

“(ii) that gives assurance that the local educational agency has carried out the notification and, in the case of a public school, public meeting required by paragraph (2).

“(B) A statement, the accuracy of which is sworn to by a responsible official of the agency (by notarization or other means of certification), that includes the following with respect to each school for which a deferral is sought in the request:

“(i) A statement that, in spite of the fact that the local educational agency has made a good faith effort to meet the deadline for submission of a management plan under subsection (a), the agency will not be able to meet the deadline. The statement shall include a brief explanation of the reasons why the deadline cannot be met.

“(ii) A statement giving assurance that the local educational agency has made available for inspection by the public, at each school for which a deferral is sought in the request, at least one of the following documents:

Public
information.

Contracts.

"(I) A solicitation by the local educational agency to contract with an accredited asbestos contractor for inspection or management plan development.

"(II) A letter attesting to the enrollment of school district personnel in an Environmental Protection Agency-accredited training course for inspection and management plan development.

"(III) Documentation showing that an analysis of suspected asbestos-containing material from the school is pending at an accredited laboratory.

"(IV) Documentation showing that an inspection or management plan has been completed in at least one other school under the local educational agency's authority.

"(iii) A statement giving assurance that the local educational agency has carried out the notification and, in the case of a public school, public meeting required by paragraph (2).

Contracts.

"(iv) A proposed schedule outlining all significant activities leading up to submission of a management plan by May 9, 1989, including inspection of the school (if not completed at the time of the request) with a deadline of no later than December 22, 1988, for entering into a signed contract with an accredited asbestos contractor for inspection (unless such inspections are to be performed by school personnel), laboratory analysis of material from the school suspected of containing asbestos, and development of the management plan.

"(2) NOTIFICATION AND PUBLIC MEETING.—Before filing a deferral request under paragraph (1), a local educational agency shall notify affected parent, teacher, and employee organizations of its intent to file such a request. In the case of a deferral request for a public school, the local educational agency shall discuss the request at a public meeting of the school board with jurisdiction over the school, and affected parent, teacher, and employee organizations shall be notified in advance of the time and place of such meeting.

"(3) RESPONSE BY GOVERNOR.—(A) Not later than 30 days after the date on which a Governor receives a deferral request under paragraph (1) from a local educational agency, the Governor shall respond to the local educational agency in writing by acknowledging whether the request is complete or incomplete. If the request is incomplete, the Governor shall identify in the response the items that are missing from the request.

"(B) A local educational agency may correct any deficiencies in an incomplete deferral request and refile the request with the Governor. In any case in which the local educational agency decides to refile the request, the agency shall refile the request, and the Governor shall respond to such refiled request in the manner described in subparagraph (A), no later than 15 days after the local educational agency has received a response from the Governor under subparagraph (A).

"(C) Approval of a deferral request under this subsection occurs only upon the receipt by a local educational agency of a written acknowledgment from the Governor that the agency's deferral request is complete.

"(4) **SUBMISSION AND REVIEW OF PLAN.**—A local educational agency whose deferral request is approved shall submit a management plan to the Governor not later than May 9, 1989. Such management plan shall include a copy of the deferral request and the statement accompanying such request. Such management plan shall be reviewed in accordance with subsection (c), except that the Governor may extend the 30-day period for revision of the plan under subsection (c)(2) for only an additional 30 days (for a total of 60 days).

"(5) **IMPLEMENTATION OF PLAN.**—The approval of a deferral request from a local educational agency shall not be considered to be a waiver or exemption from the requirement under section 203(i) for the local educational agency to begin implementation of its management plan by July 9, 1989.

"(6) **EPA NOTICE.**—(A) Not later than 15 days after the date of the enactment of this subsection, the Administrator shall publish in the Federal Register the following:

Federal
Register,
publication.

"(i) A notice describing the opportunity to file a request for deferral under this subsection.

"(ii) A list of the State offices (including officials (if available) in each State as designated under subsection (b)) with which deferral requests should be filed.

"(B) As soon as practicable, but in no event later than 30 days, after the date of the enactment of this subsection, the Administrator shall mail a notice describing the opportunity to file a request for deferral under this subsection to each local educational agency and to each State office in the list published under subparagraph (A)."

SEC. 2. NOTIFICATION TO EPA OF STATUS OF STATE MANAGEMENT PLAN SUBMISSIONS.

Section 205 of the Toxic Substances Control Act (15 U.S.C. 2645), as amended by section (1), is further amended by adding at the end the following new subsection:

"(e) **STATUS REPORTS.**—(1) Not later than December 31, 1988, the Governor of each State shall submit to the Administrator a written statement on the status of management plan submissions and deferral requests by local educational agencies in the State. The statement shall be made available to local educational agencies in the State and shall contain the following:

"(A) A list containing each local educational agency that submitted a management plan by October 12, 1988.

"(B) A list containing each local educational agency whose deferral request was approved.

"(C) A list containing each local educational agency that failed to submit a management plan by October 12, 1988, and whose deferral request was disapproved.

"(D) A list containing each local educational agency that failed to submit a management plan by October 12, 1988, and did not submit a deferral request.

"(2) Not later than December 31, 1989, the Governor of each State shall submit to the Administrator an updated version of the written statement submitted under paragraph (1). The statement shall be made available to local educational agencies in the State and shall contain the following:

“(A) A list containing each local educational agency whose management plan was submitted and not disapproved as of October 9, 1989.

“(B) A list containing each local educational agency whose management plan was submitted and disapproved, and which remains disapproved, as of October 9, 1989.

“(C) A list containing each local educational agency that submitted a management plan after May 9, 1989, and before October 10, 1989.

“(D) A list containing each local educational agency that failed to submit a management plan as of October 9, 1989.”.

SEC. 3. PUBLICATION OF EPA-APPROVED ACCREDITATION COURSES.

Section 206 of the Toxic Substances Control Act (15 U.S.C. 2646) is amended by adding at the end the following new subsection:

Federal
Register,
publication.

“(f) **LIST OF EPA-APPROVED COURSES.**—Not later than August 31, 1988, and every three months thereafter until August 31, 1991, the Administrator shall publish in the Federal Register a list of all Environmental Protection Agency-approved asbestos training courses for persons to achieve accreditation in each category described in subsection (b)(1)(A) and for laboratories to achieve accreditation. The Administrator may continue publishing such a list after August 31, 1991, at such times as the Administrator considers it useful. The list shall include the name and address of each approved trainer and, to the extent available, a list of all the geographic sites where training courses will take place. The Administrator shall provide a copy of the list to each State official on the list published by the Administrator under section 205(d)(6) and to each regional office of the Environmental Protection Agency.”.

SEC. 4. WORKER PROTECTION.

(a) **WORKER PROTECTION REQUIRED.**—The Toxic Substances Control Act (15 U.S.C. 2601 et seq.) is further amended by adding at the end the following new section:

15 USC 2655.

“SEC. 215. WORKER PROTECTION.

“(a) **PROHIBITION ON CERTAIN ACTIVITIES.**—Until the local educational agency with authority over a school has submitted a management plan (for the school) which the State Governor has not disapproved as of the end of the period for review and revision of the plan under section 205, the local educational agency may not do either of the following in the school:

“(1) Perform, or direct an employee to perform, renovations or removal of building materials, except emergency repairs, in the school, unless—

“(A) the school is carrying out work under a grant awarded under section 505 of the Asbestos School Hazard Abatement Act of 1984; or

“(B) an inspection that complies with the requirements of regulations promulgated under section 203 has been carried out in the school and the agency complies with the following sections of title 40 of the Code of Federal Regulations:

“(i) Paragraphs (g), (h), and (i) of section 763.90 (response actions).

“(ii) Appendix D to subpart E of part 763 (transport and disposal of asbestos waste).

Waste disposal.

“(2) Perform, or direct an employee to perform, operations and maintenance activities in the school, unless the agency complies with the following sections of title 40 of the Code of Federal Regulations:

“(A) Section 763.91 (operations and maintenance), including appendix B to subpart E of part 763.

“(B) Paragraph (a)(2) of section 763.92 (training and periodic surveillance).

“(b) **EMPLOYEE TRAINING AND EQUIPMENT.**—Any school employee who is directed to conduct emergency repairs involving any building material containing asbestos or suspected of containing asbestos, or to conduct operations and maintenance activities, in a school—

“(1) shall be provided the proper training to safely conduct such work in order to prevent potential exposure to asbestos; and

“(2) shall be provided the proper equipment and allowed to follow work practices that are necessary to safely conduct such work in order to prevent potential exposure to asbestos.

“(c) **DEFINITION OF EMERGENCY REPAIR.**—For purposes of this section, the term ‘emergency repair’ means a repair in a school building that was not planned and was in response to a sudden, unexpected event that threatens either—

“(1) the health or safety of building occupants; or

“(2) the structural integrity of the building.”.

(b) **CLERICAL AMENDMENT.**—The table of contents in section 1 of such Act is amended by adding after the item relating to section 214 the following new item:

“Sec. 215. Worker protection.”.

(c) **EFFECTIVE DATE.**—Section 215 of the Toxic Substances Control Act, as added by subsection (a), shall take effect on October 12, 1988.

15 USC 2655
note.

SEC. 5. ENFORCEMENT.

Section 207(a) of the Toxic Substances Control Act is amended—

(1) by striking out “or” at the end of paragraph (2); and

(2) by adding after paragraph (3) the following new paragraphs:

“(4) which carries out any activity prohibited by section 215, or

“(5) which knowingly submits false information to the Governor regarding a deferral request under section 205(d).”.

15 USC 2647.

SEC. 6. TECHNICAL CORRECTIONS TO AHERA.

(a) **PLACEMENT OF SENTENCE.**—Section 512 of the Asbestos School Hazard Abatement Act of 1984 (20 U.S.C. 4021) is amended by moving the last sentence of such section (as added by section 4(a) of the Asbestos Hazard Emergency Response Act of 1986) to the end of paragraph (1) of subsection (a).

(b) **CROSS REFERENCES.**—Paragraph (4) of section 505(g) of such Act (20 U.S.C. 4014) (as added by section 3(a) of the Asbestos Hazard Emergency Response Act of 1986) is amended—

(1) in subparagraph (B)(i), by striking out “this title” and inserting in lieu thereof “such Act”; and

(2) in subparagraph (B)(ii), by striking out “subsection (d)” and inserting in lieu thereof “section 206(d) of the Toxic Substances Control Act”.

Approved July 18, 1988.

LEGISLATIVE HISTORY—H.R. 3893 (S. 2024):

HOUSE REPORTS: No. 100-734 (Comm. on Energy and Commerce).

SENATE REPORTS: No. 100-405 accompanying S. 2024 (Comm. on Environment and Public Works).

CONGRESSIONAL RECORD, Vol. 134 (1988):

June 27, considered and passed House.

June 29, considered and passed Senate.